IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1475 of 1990

HONOURABLE MR.JUSTICE KS JHAVERI

==========

GIRDHARLAL R TANNA & 1 - Appellant(s)
Versus
KANAIYALAL H SHAH - Defendant(s)

==========

Appearance :
MR JD AJMERA for Appellant(s) : 1 - 2.
MR SUNIL K SHAH for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2006

ORAL JUDGMENT

1. This appeal is at the instance of the original claimants against the judgement and award dated 5th August 1989 passed by the Motor Accident Claims Tribunal (Second), Amreli in M.A.C. Petition No.12/88 whereby the said claim petition came to be dismissed.

2. The case of the claimants i.e. Parents of minor Rajesh is that the driver of the Ambassador Car GUO 7581 rashly and negligently driven the car and knocked down minor Rajesh on 29th August 1997 as a result of which Rajesh had died. The claimants therefore filed claim petition claiming Rs.2,50,000/- But the claim was later on restricted to

Rs.1,00,000/-. Ultimately the Tribunal found that the claimants would have entitled to the compensation of Rs.35,000/- if they would have succeeded in establishing that opponent no.1 was the owner and/or driver of the motor-car involved in the accident. However, the Tribunal held that the claimants could not establish their case. The claim petition was therefore dismissed.

3. Learned Advocate for the appellant submitted that the Tribunal erred in holding that there is no satisfactory evidence on record to show that the original opponent no.1 was the driver at the time of the accident and rejecting the claim of the claimants.

4. Thus, the crux of the matter is whether the Tribunal was right in dismissing the claim petition on the ground that the vehicle involved was not in the name of the original opponent no.1. In this regard it is required to be noted that the registration book of the vehicle bearing No.GUO 7581 was produced on record from which it is clear that the original opponent no.1 is the owner of the vehicle in question. In paragraph 6 of the judgement the Tribunal has also recorded that while recording the statement the witness has stated that she came to know that one Kanubhai was the driver as well as the owner of the Ambassador car in question. In that view of the matter I am of the view that the Tribunal has committed an error in dismissing the claim

petition on the ground that the claimants have failed to prove that the vehicle involved was not in the name of the original opponent no.1. Learned Advocate for the respondent is not able to dispute the aforesaid position.

5. It is required to be noted that when the matter was heard earlier time was granted to verify whether the vehicle in question was insured with any Insurance Company or not. However, it has been stated that the vehicle has not been insured.

6. It has been reported that a sum of Rs.5000/- has been paid to the claimants on 6th March 2003, and the copy of receipt has been produced on record.

7. In the premises aforesaid this appeal is allowed. The impugned award of the Tribunal is quashed and set aside. It is held that the claimants are entitled to recover a sum of Rs.35,000/-. Since the claimants have been paid Rs.5000/-, the remaining amount shall be paid to them by the respondent. The amount of Rs.35000/- shall carry interest at the rate of 6% from the date of application till 6th March 2003 and thereafter interest will be paid on a sum of Rs.30000/- till realisation. No order as to costs.

[K.S. JHAVERI,J.]

ar